IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 16TH AUGUST 2007 / 25TH SRAVANA 1929

WP(C).No. 24759 of 2007(V)

OS.118/2007 of MUNSIFF COURT,THODUPUZHA
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PETITIONER:

SABU PAUL, S/O PAULOSE,
MADAKKATHANATHU HOUSE,
PERUMPILLICHIRA P.O.,
PERUMPILLICHIRA KARA,
KUMARAMANGALAM VILLAGE.

BY ADV. SRI.T.KRISHNANUNNI

RESPONDENTS:
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1. LUKA, S/O VARGHESE,
KUNNAMPILLIL HOUSE, KARIMANNOOR KARA,
KARIMANNOR VILLAGE, THODUPUZHA TALUK.

2. SAVITHRI ANTHARJANAM,
W/O PARAMESHWARAN NAMBOOTHIRI,
ENCHAPILLIL HOUSE, SHAPPUMPADI KARA,
THODUPUZHA VILLAGE, THODUPUZHA TALUK.

BY /

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 16/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN , J

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W.P.(C) NO. 24759 OF 2007

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Dated this the 16th day of August, 2007.

JUDGMENT

This writ petition is filed challenging the order of the leaned Munsiff, Thodupuzha in I.A. No. 823/2007 in O.S. No. 118/2007. The said application was filed by the plaintiff in the suit. It was an application requesting the court to depute the very same commissioner who had inspected the property and had submitted the report and the averment is to the effect that the defendants had violated the order of status quo and it can be seen if inspection is done by the same commissioner. The learned counsel for the revision petitioner/defendants would submit before me that the earlier report of the commissioner was not based on the actual facts and if the very same commissioner inspects the property he would stick on to his earlier report which will cause prejudice to the writ petitioner and therefore in the interest of justice a new commissioner should be appointed. A perusal of the order of the court below would show that the court passed an order of status quo only on the basis of the commissioner's report and a person who was inspected the property and reported about the position of the property on a particular day

certainly would be more competent to say about the changes if any that had taken place. If the report of the commissioner at the first instance itself is wrong or against facts, it is for the party who challenges it to prove it. Since the court had followed the the earlier commissioner's report to pass order of status quo, the best thing is only to depute the very same commissioner to note the changes if any and that is what is precisely done by the court below. So I do not find any illegality in the matter and therefore the writ petition lacks merits and is dismissed. But I make it clear that, it will not in any way deprive the present writ petitioner in challenging the correctness or otherwise of the original report submitted by the commissioner.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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